

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL SCOTT MACLAY, a
single person,

Plaintiff,

v.

COUNTY OF SPOKANE; SPOKANE
COUNTY SHERIFF'S
DEPARTMENT; OZZIE
KNEZOVICH; BRENDA NELSON;
DEPUTY J. COOK; and SPOKANE
COUNTY JAIL,

Defendants.

NO: 2:14-CV-91-RMP

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT is Defendants' Motion for Summary Judgment,
ECF No. 6. The Court heard the motion without oral argument on December 12,
2014. The Court has reviewed the motion, Plaintiff's response, ECF No. 9,
Defendants' reply, ECF No. 11, all supporting documentation and relevant filings,
and is fully informed.

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT ~ 1

1 Plaintiff filed this 42 U.S.C. § 1983 action in Spokane County Superior
2 Court against Spokane County, the Spokane County Sheriff's Department, the
3 Spokane County Jail, Sheriff Ozzie Knezovich, Deputy J. Cook, and Brenda
4 Nelson, an employee of the Spokane County Jail. ECF No. 1. Plaintiff alleges
5 violations of his rights under Article I of the Washington State Constitution and the
6 Eighth Amendment to the U.S. Constitution. ECF No. 1. Plaintiff contends that
7 Defendants are liable personally and on the bases of agency and the doctrine of
8 respondeat superior. ECF No. 1. Plaintiff requests monetary and injunctive relief.
9 ECF No. 1. Defendants removed this action to federal court. ECF No. 1.
10 Defendants now move for summary judgment as to all claims against them
11 pursuant to Federal Rule of Civil Procedure 56, on the basis that there are no
12 genuine issues of material fact to be resolved at trial. For the reasons stated below,
13 the Court grants the motion.

14 **BACKGROUND**

15 Plaintiff Michael Scott Maclay (hereinafter "Plaintiff") alleges that he
16 suffers from asbestosis. ECF No. 9 at 1; 9-2 at 1 (Pl.'s Decl.). He states that on
17 October 22, 2010, he reported to Spokane County Jail regarding a civil bench
18 warrant, but was turned away, allegedly because of his medical condition. ECF
19
20

1 No. 9 at 2. Defendants contend that Plaintiff was turned away because the jail did
2 not have a “due-in commitment” for Plaintiff.¹ ECF No. 8-2.

3 Plaintiff alleges that on October 27, 2010, he faxed to Defendant Brenda
4 Nelson documentation evidencing that he suffers from asbestosis for which he
5 requires medication. ECF No. 9-1. At the time, Plaintiff apparently believed that
6 Brenda Nelson was a jail supervisor and the Operation’s Manager responsible for
7 obtaining Plaintiff’s prescribed medications prior to his arrival, ECF Nos. 9-1; 1 at
8 3. There is no corroborating evidence that the jail ever received the letter and
9 documentation from Plaintiff or that Plaintiff ever received a response from the jail
10 regarding his letter.

11 On February 21, 2011, Sheriff’s Deputy J. Cook stopped Plaintiff’s vehicle
12 for speeding. ECF No. 8-2. Defendants state that Deputy Cook conducted a
13 records check on Plaintiff’s name and learned that there was a civil bench warrant
14 for Plaintiff’s arrest. ECF No. 8-3. Deputy Cook inquired of Plaintiff regarding
15 the warrant, and Plaintiff alleges that he informed Deputy Cook that he reported to
16 the jail in October but was turned away. ECF No. 9 at 2. Deputy Cook arrested
17 Plaintiff and transported him to the Spokane County Jail. ECF No. 8-3.

18
19 ¹ Spokane County Jail received the arrest warrant approximately four and a half
20 hours after Plaintiff was turned away. ECF No. 8-4.

1 Plaintiff alleges that he again informed jail personnel of his medical
2 condition and required medications during intake on February 21, 2011. ECF Nos.
3 8-4, 9. Plaintiff apparently did not have any medication in his possession at the
4 time. Plaintiff's daughter and son-in-law attest that they called the jail that day and
5 requested that they be permitted to bring Plaintiff's medication to him and that they
6 renewed their request to provide medication during the Plaintiff's first appearance
7 in court. ECF Nos. 9-3, 9-4. They allege that the request was denied both times.
8 ECF Nos. 9-3, 9-4.

9 Over the next 62 hours, Plaintiff was seen five separate times by four
10 different medical professionals at the jail. He was denied access to his
11 prescriptions, and alleges having suffered various injuries from the deprivation,
12 including an inability to breathe or sit up, a respiratory infection, a stroke, and
13 having "blacked out" in his cell. ECF Nos. 1 at 4; 9 at 3. A jail nurse gave
14 Plaintiff a Release of Information form to enable the jail medical personnel to
15 obtain Plaintiff's medical information from his doctor, but he refused to sign it.
16 ECF No. 8-5.

17 Defendants argue that summary judgment is appropriate as to the Spokane
18 County Sheriff's Department and the Spokane County Jail because neither are
19 legal entities subject to suit, ECF No. 6 at 4; as to Sheriff's Deputy J. Cook,
20 Brenda Nelson, and Ozzie Knezovich, because liability under § 1983 cannot be

1 based on respondeat superior, and Plaintiff cannot show that Defendants personally
2 participated in the harms alleged by Plaintiff, ECF No. 6 at 4-5; and as to Spokane
3 County, because Plaintiff has failed to show the constitutional violation alleged by
4 Plaintiff is the result of an official policy or custom, ECF No. 6 at 5.

5 **DISCUSSION**

6 Summary judgment is appropriate when the moving party establishes that
7 there are no genuine issues of material fact and that the movant is entitled to
8 judgment as a matter of law. Fed. R. Civ. P. 56(a). If the moving party
9 demonstrates the absence of a genuine issue of material fact, the burden then shifts
10 to the non-moving party to set out specific facts showing a genuine issue for trial.
11 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25 (1986). A genuine issue of material
12 fact exists if sufficient evidence supports the claimed factual dispute, requiring “a
13 jury or judge to resolve the parties’ differing versions of the truth at trial.” *T.W.*
14 *Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir.1987).

15 The evidence presented by both the moving and non-moving parties must be
16 admissible. Fed. R. Civ. P. 56(e). Evidence that may be relied upon at the
17 summary judgment stage includes “depositions, documents, electronically stored
18 information, affidavits or declarations, stipulations . . . admissions, [and]
19 interrogatory answers” Fed. R. Civ. P. 56(c)(1)(A). The court will not
20 presume missing facts, and non-specific facts in affidavits are not sufficient to

1 support or undermine a claim. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888-89
2 (1990).

3 In evaluating a motion for summary judgment, the Court must draw all
4 reasonable inferences in favor of the nonmoving party. *Dzung Chu v. Oracle*
5 *Corp. (In re Oracle Corp. Secs. Litig.)*, 627 F.3d 376, 387 (9th Cir. 2010) (citing
6 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)). However, “when
7 opposing parties tell two different stories, one of which is blatantly contradicted by
8 the record, so that no reasonable jury could believe it, a court should not adopt that
9 version of that facts” *Scott v. Harris*, 550 U.S. 372, 380 (2007).

10 To state a claim under 42 U.S.C. § 1983, at least two elements must be met:
11 (1) the defendant must be a person acting under color of state law; and (2) his
12 conduct must have deprived the plaintiff of rights, privileges or immunities secured
13 by the Constitution or the laws of the United States. *See Parratt v. Taylor*, 451
14 U.S. 527, 535 (1981), *overruled in part on other grounds by Daniels v. Williams*,
15 474 U.S. 327 (1986). Implicit in the second element is a third element of
16 causation. *Mt. Healthy City Sch. Dist. Bd. of Ed. v. Doyle*, 429 U.S. 274, 286–87
17 (1977).

18 Municipalities are “persons” subject to suit under § 1983, *Monell v. New*
19 *York City Dept. of Soc. Serv's*, 436 U.S. 658, 690 (1978), but neither municipalities
20 nor individuals may be subject to liability under § 1983 based on respondeat

1 superior. *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009) (“... Government officials
2 may not be held liable for the unconstitutional conduct of their subordinates under
3 a theory of respondeat superior.”); *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir.
4 1979) (“... vicarious liability may not be imposed on a state or municipal official
5 for acts of lower officials in the absence of a state law imposing such liability.”).
6 Plaintiff has cited no Washington statute creating an exception to this rule.
7 Regardless, “liability may attach if an employee commits an alleged constitutional
8 violation pursuant to a formal governmental policy or a longstanding practice or
9 custom which constitutes the standard operating procedure.” *Hervey v. Estes*, 65
10 F.3d 784, 791 (9th Cir. 1995) (internal quotation marks omitted).

11 **A. Claims Against Brenda Nelson**

12 Plaintiff has sued Brenda Nelson, apparently under the mistaken impression
13 that Ms. Nelson is, or was, a jail supervisor and Operations Manager responsible
14 for ensuring that Plaintiff received proper medical care or his prescribed
15 medications while incarcerated at Spokane County Jail. The record clearly
16 contradicts this assumption, and Plaintiff fails to present any evidence suggesting
17 otherwise. *Compare* ECF No. 9 at 5 (providing no support for the allegation that
18 “Defendant Brenda Nelson . . . as jail supervisor, [] was directly responsible for
19 the implementation of jail policies and procedures, including procedures regarding
20 medications.”), *with* ECF No. 10 at 2 (Brenda Nelson Aff.) (“I am the ‘Fugitive

1 Transport Coordinator’ I have never been a jail supervisor nor responsible for
2 jail policies and procedures, including procedures regarding medication”). Not
3 only was Ms. Nelson not a supervisor, but respondeat superior cannot provide a
4 basis for liability in § 1983 actions. *Iqbal*, 556 U.S. at 676.

5 “Because vicarious liability is inapplicable to *Bivens* and § 1983 suits, a
6 plaintiff must plead that each Government-official defendant, through the official’s
7 own individual actions, has violated the Constitution.” *Iqbal*, 556 U.S. at 676.
8 Plaintiff has not pleaded any facts supporting the allegation that Ms. Nelson
9 violated Plaintiff’s constitutional rights through her own individual actions and has
10 not submitted any evidence that Ms. Nelson’s conduct “deprived the plaintiff of
11 rights, privileges or immunities secured by the Constitution or the laws of the
12 United States.” *See Parratt*, 451 U.S. at 535. Thus, there is no genuine issue of
13 material fact regarding Ms. Nelson’s liability and no evidence of wrongdoing by
14 Ms. Nelson. Therefore, the claims against her are dismissed with prejudice.

15 **B. Claims Against Deputy J. Cook**

16 Plaintiff alleges that Deputy Cook violated his constitutional rights when he
17 arrested Plaintiff because Plaintiff informed Deputy Cook that he had reported to
18 the jail and had been turned away. ECF No. 9 at 5. Plaintiff claims the arrest itself
19
20

1 constituted a violation of Plaintiff's due process rights under the Washington State
2 Constitution, and presumably, the U.S. Constitution.²

3 Plaintiff does not allege that Deputy Cook lacked probable cause when he
4 stopped Plaintiff. Nor does he allege that Deputy Cook did not have a lawful duty
5 to arrest him based on the civil bench warrant.

6 Moreover, there is no allegation that Deputy Cook had any knowledge of
7 Plaintiff's injuries apart from Plaintiff's alleged statements to him at the scene of
8 arrest that the jail might not have the medical resources available to treat Plaintiff's
9 illness. In fact, the record suggests the contrary. It appears that the only
10 information that Deputy Cook had access to at the time of arrest was a warrant for
11 Plaintiff's arrest. ECF No. 8-3. The "Notification of Inmate Turned Away"
12 document that was issued when Plaintiff reported to the jail in October 2010 states
13 only that "[t]he jail had no due-in commitment for this person." ECF No. 8-1.

14 Plaintiff has not submitted any evidence that Deputy Cook's conduct
15 "deprived the plaintiff of rights, privileges or immunities secured by the
16 Constitution or the laws of the United States." *See Parratt*, 451 U.S. at 535.

17
18 ² 42 U.S.C. § 1983 applies to officials acting under color of state law when they
19 violate federal law, not state law. *See Mitchum v. Foster*, 407 U.S. 225, 239
20 (1972).

1 Without more, there is no genuine issue of material fact regarding Deputy Cook's
2 liability for the harms that Plaintiff alleges and no evidence of any wrongdoing by
3 Deputy Cook. Therefore, the claims against Deputy Cook are dismissed with
4 prejudice.

5 **C. Claims against Sheriff Ozzie Knezovich**

6 Plaintiff contends that Sheriff Knezovich is liable for the violation of his
7 constitutional rights based on respondeat superior, ECF No. 1, and based on his
8 personal responsibility "for the creation and implementation of jail policies and
9 procedures, including those on prescription medications," ECF No. 9 at 5.

10 Because respondeat superior cannot form a basis for liability in § 1983
11 actions, *Iqbal*, 556 U.S. at 676, Plaintiff must show that Sheriff Knezovich violated
12 Plaintiff's constitutional rights through his individual actions, *id.* Plaintiff must
13 show either that Sheriff Knezovich personally neglected to properly supervise jail
14 personnel who violated Plaintiff's constitutional rights, or personally created or
15 implemented the alleged jail policies and procedures regarding prescription
16 medications.

17 Plaintiff does not allege that Sheriff Knezovich neglected to supervise jail
18 personnel. To the contrary, Plaintiff alleges that jail personnel followed the
19 provisions of the alleged jail policy when they refused to accept Plaintiff's
20 prescription medications from his daughter and son-in-law. Instead, Plaintiff

1 argues that the implementation of the alleged jail policy prohibiting outside
2 medications violated his constitutional rights. Therefore, in order to overcome
3 summary judgment as to Sheriff Knezovich, Plaintiff must allege some specific
4 facts and provide evidence to create a genuine issue of material fact regarding
5 whether Sheriff Knezovich personally created or implemented the alleged jail
6 policies and procedures prohibiting outside medications. But Plaintiff has not
7 pleaded any facts supporting the contention that Sheriff Knezovich personally
8 created the alleged jail policy on prescription medications.

9 Even if Plaintiff were able to prove that Sheriff Knezovich personally
10 implemented the alleged jail policy or custom regarding prescription medications,
11 Plaintiff must still make the requisite showing of liability to withstand summary
12 judgment. To support an Eighth Amendment violation under § 1983, a plaintiff
13 must show that a defendant acted with “deliberate indifference” to a prisoner’s
14 serious illness or injury sufficient to constitute cruel and unusual punishment.
15 *Estelle v. Gamble*, 429 U.S. 97, 105 (1976).³ Negligent conduct alone is not
16 sufficient. *Daniels v. Williams*, 474 U.S. 327, 329-30 (1986).

17 ³“Claims by pretrial detainees are analyzed under the Fourteenth Amendment Due
18 Process Clause, rather than under the Eighth Amendment Because pretrial
19 detainees’ rights under the Fourteenth Amendment are comparable to prisoners’
20 rights under the Eighth Amendment, however, we apply the same standards.”

1 Similarly, to make out a § 1983 claim for a violation of a plaintiff's due
2 process rights under the Fourteenth Amendment, a plaintiff must show more than
3 negligence. *Id.* at 330-32. "Far from an abuse of power, lack of due care suggests
4 no more than a failure to measure up to the conduct of a reasonable person. To
5 hold that injury caused by such conduct is a deprivation within the meaning of the
6 Fourteenth Amendment would trivialize the centuries-old principle of due process
7 of law." *Id.* at 330-32. A plaintiff alleging a Fourteenth Amendment violation
8 must allege a "deliberate decision[]" by a government official to deprive an
9 individual of life, liberty, or property. *Id.* at 331.

10 Even assuming that Sheriff Knezovich implemented the alleged policy or
11 custom at issue here, there is nothing in the record to support the contention that he
12 either acted with deliberate indifference to Plaintiff's serious illness sufficient to
13 constitute cruel and unusual punishment or made a deliberate decision to deprive
14 Plaintiff of due process. *See Estelle*, 429 U.S. at 105. Plaintiff fails to allege any
15 specific facts illustrating that Sheriff Knezovich even acted negligently when he
16 arguably implemented the alleged policy.

17
18
19

Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998) (citing *Bell v. Wolfish*, 442
20 U.S. 520, 535 n.16 (1979).

1 Plaintiff has failed to raise a genuine issue of material fact as to whether
2 Sheriff Knezovich deliberately violated Plaintiff's constitutional rights by
3 personally creating or implementing the alleged jail policies and procedures.
4 Plaintiff has failed to support the contention that Sheriff Knezovich acted with
5 deliberate indifference to Plaintiff's serious illness sufficient to constitute cruel and
6 unusual punishment or made a deliberate decision to deprive Plaintiff of due
7 process. Therefore, Plaintiff's claims against Sheriff Knezovich are dismissed
8 with prejudice.

9 **D. Spokane County Sheriff's Department and Spokane County Jail**

10 Plaintiff has sued both the Spokane County Sheriff's Department and the
11 Spokane County Jail for alleged violations of his constitutional rights. ECF No. 1.
12 Defendants contend that the Sheriff's Department and the County Jail are not legal
13 entities subject to suit. ECF No. 6 at 4. The Ninth Circuit has not expressly ruled
14 on whether a county sheriff's department or jail constitutes a legal entity subject to
15 suit, but the Eleventh Circuit has stated that "[s]heriff's departments and police
16 departments are not usually considered legal entities subject to suit . . . but capacity
17 to sue or be sued shall be determined by the law of the state in which the district
18 court is held." *See Dean v. Barber*, 951 F.2d 1210, 1214 (11th Cir. 1992)).

19 In one case, the Ninth Circuit considered whether a municipal police
20 department was subject to suit. *Shaw v. State of California Dept. of Alcoholic*

1 *Beverage Control*, 788 F.2d 600 (9th Cir. 1986). There, the Ninth Circuit applied
2 the law of the state in which the district court was located, California, to conclude
3 that the police department was a legal entity subject to suit. *Shaw*, 788 F.2d at 605.
4 Similarly, Federal Rule of Civil Procedure 17(b) states that the law of the state
5 where the Court is located determines capacity to sue or be sued.

6 Federal district courts sitting in Washington State have concluded that
7 Washington municipal police and sheriff's departments are not legal entities
8 subject to suit. *See, e.g., Van Vilkinburgh v. Wulick*, No. C07-5050FDB, 2008 WL
9 2242470, at *1 (W.D. Wa. May 29, 2008); *Burton v. Hale*, No. C06-654-MJP-JPD,
10 2008 WL 623718, at *2 (W.D. Wa. Mar. 4, 2008); *Lopez v. Benton County*
11 *Sheriff's Office*, No. CV-12-5016-LRS, 2012 WL 5986420, at *1 (E.D. Wa. Nov.
12 29, 2012); *Bibbins v. Des Moines Police Dept.*, No. C13-139RAJ, 2014 WL
13 908884, at *2 (W.D. Wa. Mar. 7, 2014); *Bradford v. City of Seattle*, 557 F.Supp.2d
14 1189, 1207 (W.D. Wa. 2008); *Rengo v. Cobane*, No. C12-298TSZ, 2013 WL
15 5913371, at *4 (W.D. Wa. Nov. 4, 2013); *Rangel v. United States*, No. CV-09-
16 3061-EFS, 2010 WL 3715489, at *2 (E.D. Wa. Sept. 13, 2010); *Runnels v. City of*
17 *Vancouver*, No. C10-5913BHS, 2011 WL 1584442, at *11 (W.D. Wa. Apr. 27,
18 2011).

1 Defendants cite *Nolan v. Snohomish County*, 59 Wn. App. 876 (1990), in
2 which the Washington Court of Appeals interpreted Washington State law and
3 concluded that:

4 RCW 36.32.120(6), read together with RCW 36.01.010 and .020,
5 makes clear the legislative intent that in a legal action involving a
6 county, the county itself is the only legal entity capable of suing and
7 being sued. It follows that a county council is not a legal entity
8 separate and apart from the county itself. Jurisdiction over the
9 [municipal department] is achieved by suing [the] County.

10 *Nolan*, 59 Wn. App. at 883.

11 The Court agrees with both the Washington Court of Appeals interpretation
12 of Washington State law and the prevailing position of the federal district courts in
13 Washington State that the Spokane County Sheriff's Department and the Spokane
14 County Jail are not legal entities subject to suit. Plaintiff has not raised a genuine
15 issue of material fact regarding their capacity to be sued. Therefore, Plaintiff's
16 claims against the Spokane County Sheriff's Department and the Spokane County
17 Jail are dismissed with prejudice, because they are immune from suit.

18 **E. Spokane County**

19 Plaintiff claims Spokane County is liable for the actions of the Sheriff's
20 Department and the jail on the basis of respondeat superior and agency principles.

1 ECF No. 1. On the grounds previously stated, any claims against Spokane County
2 based on vicarious liability are dismissed. Plaintiff further contends in his
3 response brief that Spokane County is liable based on its official policy and custom
4 regarding inmate access to prescription medications. ECF No. 9 at 6-9.

5 A policy is a “deliberate choice to follow a course of action . . . made from
6 among various alternatives.” *Long v. Cnty. of Los Angeles*, 442 F.3d 1178, 1185
7 (9th Cir. 2006). A local governmental body can be held liable under § 1983 based
8 upon both policies of action and inaction. *See Gibson v. Cnty. of Washoe*, 290
9 F.3d 1175, 1185–86 (9th Cir. 2002). A policy of action is one in which the
10 governmental body itself violates someone's constitutional rights, or instructs its
11 employees to do so, whereas a policy of inaction may be based on a governmental
12 body's “failure to implement procedural safeguards to prevent constitutional
13 violations.” *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1143 (9th Cir.2012).

14 Defendants argue that Plaintiff has failed to provide sufficient evidence
15 supporting the existence of a jail policy or custom regarding inmate access to
16 prescription medications. ECF No. 11 at 6. Defendants specifically contest
17 Plaintiff’s use of a local newspaper article as evidentiary support for the existence
18 of the jail’s policy. ECF No. 11 at 5-6. Defendants are correct that any evidence
19 that the Court considers at this stage must be admissible, Fed. R. Civ. P. 56(c), and
20 the newspaper article is not admissible as submitted. Therefore, Plaintiff has failed

1 to provide sufficient evidence to raise a genuine issue of material fact as to whether
2 there is a jail policy or custom regarding inmate access to prescription medications
3 that could give rise to Plaintiff's claim of a constitutional violation.

4 The Court finds that, because there is no genuine issue of material fact and
5 no evidence supporting Plaintiff's claim at the summary judgment stage, that
6 summary judgment in favor of Spokane County is appropriate.

7 Accordingly, **IT IS HEREBY ORDERED:**

8 (1) Defendants' Motion for Summary Judgment, **ECF No. 6**, is **GRANTED**;

9 (2) Plaintiff's complaint against Defendant Brenda Nelson is **DISMISSED**
10 with prejudice.

11 (3) Plaintiff's complaint against Defendant Deputy J. Cook is **DISMISSED**
12 with prejudice.

13 (4) Plaintiff's complaint against Defendant Sheriff Ozzie Knezovich is
14 **DISMISSED** with prejudice.

15 (5) Plaintiff's complaint against Defendant Spokane County Sheriff's
16 Department is **DISMISSED** with prejudice.

17 (6) Plaintiff's complaint against Defendant Spokane County Jail is
18 **DISMISSED** with prejudice.

19 ///

20 ///

1 (7) Plaintiff's complaint against Defendant Spoken County is **DISMISSED**
2 with prejudice.

3 The District Court Clerk is directed to enter this Order, **terminate all**
4 **Defendants, close** the file, and provide copies of this Order to counsel.

5 DATED this 22nd day of December 2014.

6 s/ Rosanna Malouf Peterson
7 ROSANNA MALOUF PETERSON
8 Chief United States District Court Judge
9
10
11
12
13
14
15
16
17
18
19
20